

(2001) 07 MP CK 0061
In the Madhya Pradesh High Court
Case No : M.A. No. 933 of 1997

Gaura Bai and Others

APPELLANT

Vs

Dev Nath Makad and Others

RESPONDENT

Date of Decision : 12-07-2001

Acts Referred:

Insurance Act, 1938 — Section 64VB

Citation : (2003) ACJ 836 : (2002) 1 MPJR 291 : (2002) 3 MPLJ 385

Hon'ble Judges : Bhawani Singh, C.J.; Arun Mishra, J

Bench : Division Bench

Advocate : G.C. Jain, for the Appellant; T.C. Naik and Mamta Billore, for the Respondent

Judgement

Bhawani Singh, C.J.

This appeal by claimants is directed against award dated 9.10.1996 of Motor Accidents Claims Tribunal, Bhopal in Claim Case No. 15 of 1996.

Ramesh Chandra (30) was an engineer with Shrinath Finance Co. (P) Ltd., Bhopal receiving a salary of Rs. 3,000 per month. He was unmarried and claimants were dependent on him. He was possessing good health at the time of accident which took place on 1.2.1990 at about 12 a.m. He was going on his scooter No. MP 04-A 3642 on the left side of the road towards Bharat Talkies, Hamidia Road, Bhopal. Suddenly truck No. MBC 8097 owned by Radhe Lal and driven by Dev Nath Makad rashly and negligently hit Ramesh Chandra, as a result of impact of accident, his scooter went under the truck and the deceased became unconscious. He died on the way to hospital due to injuries sustained in this accident.

Matter was reported to Magalwara Police Station. Claim petition was filed for compensation of Rs. 14,65,000. The owner and driver of the truck disputed the allegations. Radhe Lal, the registered owner of the truck stated that he had sold it to Dev Nath Makad, driver of the vehicle. It is also stated that liability to pay

the compensation was of Oriental Insurance Co. Ltd., with which the vehicle was insured. Insurance company has denied the liability. It is stated that the accident took place on account of own negligence of the deceased and the insurance policy had been cancelled on the dishonour of the cheque.

After dealing with the matter, Claims Tribunal came to the conclusion that claimants were dependent upon income of the deceased but it was not proved that the deceased was earning Rs. 3,000 per month from the company at Bhopal. It further found that the accident was committed by the driver of the vehicle, owned by Radhe Lal and that the deceased was 30 years old, maintaining the family and could live and earn up to the age of 70 in case he had not died in this accident. Further, Claims Tribunal found that the policy of insurance had been cancelled, however, on merits of the case, compensation of Rs. 1,69,000 with interest at the rate of 12 per cent per annum has been awarded after application of multiplier of 14.

Claimants are not satisfied with this award, therefore, this appeal. It is submitted by Mr. G.C. Jain, learned Counsel for the claimants that Claims Tribunal has not decided the case correctly. Precisely, submission of learned Counsel is that Claims Tribunal has not awarded just compensation and instead of holding the insurance company liable to pay the compensation, the compensation has been ordered to be paid by owner and driver of the vehicle. This finding, learned Counsel contends, is against law and facts of the case and insurance company is liable to pay the compensation as per decisions of Supreme Court reported in Oriental Insurance Co. Ltd. Vs. Inderjit Kaur and Others, ; New India Assurance Co. Ltd. Vs. Rula and Others, and National Insurance Co. Ltd. Vs. Seema Malhotra and Others, .

Mr. T.C. Naik, the learned senior Counsel appearing for the respondent insurance company submitted that there is no contract of insurance between the parties, therefore, the insurance company is not liable to pay the compensation. Explaining the submission from facts of the case, the learned Counsel submitted that cheque of premium dated 18.1.1990 issued by Radhe Lal was bounced on 19.2.1990 after taking place of the accident, therefore, the liability cannot be fastened on the insurance company.

After giving careful consideration to the submissions advanced by the learned Counsel for both sides, we may record certain basic features of the case before giving our findings on the issue involved in this case.

There is no dispute that owner of vehicle issued the cheque dated 18.1.1990 towards insurance premium for truck No. MBC 8097. Sequel to that, cover note was issued. There is also no dispute that accident took place on 1.2.1990. The cheque bounced on 19.2.1990. Policy of insurance was issued on 20.1.1990 and it was cancelled on 7.3.90. There is also no dispute that on the date of accident, i.e., 1.2.1990, Radhe Lal was the owner of the vehicle and Dev Nath Makad, driver thereof. It is also brought to our notice by the learned Counsel for

claimants that although owner of vehicle has not appeared in the witness-box, he has filed his affidavit stating that he had paid the premium by bank draft dated 13.2.1990 and it has not been returned to the owner. With this background, it can be stated that third party risk was covered by the cover note followed by policy of insurance which were not cancelled before the taking place of accident. Rather the same was cancelled on 7.3.90. Therefore, the insurance company is liable to meet the risk so far as third parties are concerned. The principle laid down by Apex Court in the three decisions produced in the preceding part of the judgment squarely apply to this case and the defence of Section 64VB of the Insurance Act, 1938 would be of no consequence. The insurance company is not absolved of its obligation to third parties under the policy merely because it did not receive the premium. Subsequent cancellation of policy on the ground of non-payment of premium would not affect the rights already accrued in favour of the third party. In case insured made the payment of premium through demand draft dated 13.2.1990 as contended, the consequence would be that obligation of insurance company to meet the liability is further strengthened and the claimants cannot be made to suffer for something missing between the insurer and the insured.

Having come to the conclusion aforesaid, we hasten to examine the question of compensation in this case. Deceased was an engineer with Shrinath Finance Co. (P) Ltd., Bhopal. He was receiving salary of Rs. 3,000 per month. He was 30 years old at the time of accident, therefore, he had bright chances of improving his service career, earn more, though some time later, he was to marry. Taking into consideration his existing salary as per certificate, Exh. A-3, issued by Govind Das Bhutda, Director of company, PW 4, it can be said that the deceased was earning Rs. 3,000 per month. Out of it he must be spending 1/3rd (Rs. 1,000) on himself, leaving Rs. 2,000 to the family. This way, annual dependency would come to Rs. 24,000 and after applying multiplier of 18, the compensation comes to Rs. 4,32,000 (Rs. 24,000 x 18 = Rs. 4,32,000). Adding to this Rs. 5,000 for loss of expectancy of life, Rs. 2,000 towards funeral expenses and Rs. 2,500 for loss to the estate, the total compensation payable in this case comes to Rs. 4,41,500 (rupees four lakh forty-one thousand five hundred). The enhanced compensation shall carry interest at the rate of 9 per cent (nine per cent) per annum from the date of this judgment till payment. For past, the rate of interest would be 12 per cent per annum from the date of application till payment. Costs on parties.